

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of)
)
Implementation of Section 309(j) of the) MM Docket No. 97-234
Communications Act -- Competitive Bidding)
for Commercial Broadcast and Instructional)
Television Fixed Service Licenses)
)
Reexamination of the Policy Statement on) GC Docket No. 92-52
Comparative Broadcasting Hearings)
)
Proposals to Reform the Commission's) GEN Docket. No. 90-264
Comparative Hearing Process to Expedite)
the Resolution of Cases)

To: The Commission

REPLY COMMENTS OF KQED, INC.

KQED, Inc., licensee of noncommercial educational FM Station KQED-FM, San Francisco, CA, submits these Reply Comments in support of the position advanced by National Public Radio, Inc. et al in their Reply Comments urging that the Commission retain the secondary nature of translator stations.¹ In particular, KQED urges the Commission to retain Section 74.1204(f) of its rules. Preservation of that rule will, in many cases, avoid the loss of current service when a translator commences operation and causes interference to an existing full-power station. It will

¹ Joint Reply Comments of National Public Radio, Inc., National Federation of Community Broadcasters, the Corporation for Public Broadcasting, and the Association of America's Public Television Stations at p.5.

also avoid disputes between the translator licensee and the licensee of the full-power stations after the translator licensee has spent the funds to construct its station.

ARGUMENT

Station KQED-FM is a grandfathered, super-power FM station operating with an ERP of 110 kilowatts at a HAAT of 1,270 feet. KQED is a member of National Public Radio and Public Radio International and has won numerous awards for its news program service. As is the case with many public radio stations, KQED depends in large measure on contributions from its listeners for its financial viability, including listeners outside its 1 mv/m contour. In recent years, KQED has relied on Section 74.1204(f) to oppose FM translator applications that would have caused interference to those listeners. Indeed, in every case, KQED has demonstrated that not only are there listeners in those areas, but also that they value its programming sufficiently to contribute to KQED.

In its Notice of Proposed Rule Making, the Commission inquires as to whether it should modify Section 74.1204(f) since it "could result in the dismissal of long-form applications filed by FM translator winners . . ."² KQED urges the Commission to retain that Section as is. Repeal or modification of Section 74.1204(f) would undermine the ability of KQED and other full-power stations to assure that listeners and contributors in areas outside the station's 1 mv/m contour can receive programming uninterrupted by interference from new FM translators. While other provisions of the rules make translators a secondary service and obligate translator

² See Notice of Proposed Rule Making at ¶ 80.

licensees to resolve any interference the station might cause or shut down,³ those provisions operate only after the interference happens and listeners have either lost service altogether or endured a significant loss of quality.

Enforcement of those rules also require that the adversely affected full-power station identify the cause of the interference, which frequently takes substantial time and engineering resources. Even when a licensee ascertains the cause, it often takes a substantial period of time and the devotion of significant engineering and other personnel resources to resolve the matter. The translator licensee, having spent the funds to build the translator and to build or lease a tower or tower site, is typically reluctant to shut-down its operation because some of the full-power station's listeners receive interference. This problem is likely to be aggravated if the translator license also paid for its channel. Further, the licensee of the full-power station only knows about the interference when complaints are received and never really knows whether the problem has been fully resolved -- it can only determine whether the listeners who complained can again receive its signal unimpaired.

Section 74.1204 avoids that hassle and permits the licensee of the full-power station to interdict the construction of the translator before the harm is caused. The

³ See, Sections 74.1203 & 74.1232(h). In paragraph 80 of the Notice, the Commission also asks whether it should revise these rules too. KQED believes that the Commission should not and cannot. Revision of these rules would constitute a major departure from the current regulatory status of translator stations and could effectively change their status from secondary stations. The Commission has not given adequate public notice under the Administrative Procedure Act to modify the nature of translator service by its obtuse reference to those rules in paragraph 80 of a Notice of Proposed Rule Making purporting to consider rules for the auctioning of broadcast licenses.

resources required to bring the potential interference to the Commission's attention are minimal and listeners do not lose the full-power station's programming while the controversy between the translator and the full-power station is resolved. Indeed, by raising the potential for interference at the application stage, the licensee of the full-power station and the translator applicant can frequently resolve the matter amicably and easily. The translator licensee has not expended any funds to construct its station and alternative transmitter sites and other engineering solutions can be fully explored and exploited. Complaints after the fact lack those benefits.

Ironically, while the Commission appears concerned about the fairness of Section 74.1204(f), that Section is much less burdensome than Section 74.1203 and Section 74.1232(h) since both of those rules require that the licensee of a translator station cease operation after it has paid for the channel and has built the station. Where an application for a translator is denied pursuant to Section 74.1204(f), the applicant will not have paid for the spectrum and will not have constructed the station.

Accordingly, Section 74.1204 serves a salutatory purpose, protects the ability of full-power stations to continue serving their existing listeners and promotes the public interest in the efficient and orderly resolution of potential interference issues. KQED therefore urges the Commission to retain the rule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Theodore D. Frank', is written over a horizontal line.

Theodore D. Frank
Arnold & Porter
555 12th Street, N.W.
Washington, D.C. 20005

Counsel for KQED, Inc.

February 17, 1998

CERTIFICATE OF SERVICE

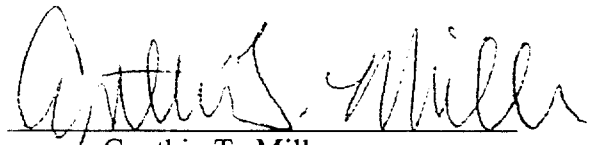
I, Cynthia T. Miller, do hereby certify that I have on this 17th day of February, 1998, caused copies of the foregoing REPLY COMMENTS OF KQED, INC. to be delivered by first-class, United States mail, postage prepaid to the following:

Neal A. Jackson
Mary Lou Kenny
Betsy Laird
Gregory A. Lewis
Michelle M. Shanahan
National Public Radio, Inc.
635 Massachusetts Avenue, N.W.
Washington, D.C. 20001

Lynn Chadwick
National Federation of
Community Broadcasters
Fort Mason Center, Building D
San Francisco, CA 94123

Marilyn Mohrman-Gillis
Lonna M. Thompson
Association of America's Public
Television Stations
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036

Kathleen A. Cox
Robert M. Winteringham
Corporation For Public Broadcasting
901 E Street, N.W.
Washington, D.C. 20004-2037


Cynthia T. Miller